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ABSTRACT

This a staff paper in response to requests from administrators and trustees in about 11 states where legislatures are considering bills that will enable the faculties to unionize for purposes of collective bargaining. Perhaps the most important question posed by such legislation is "Who is the employer for the state, university, college, or community college?" If this question goes unanswered, the legislature often permits a state agent outside the university to be the employer. This paper is intended to offer one set of suggestions for shaping legislation that would be beneficial to trustees and others interested in the integrity and ability of institutions to govern themselves. These suggestions are based on a decision that the chief executive officer be designated as the employer representing the government, with the board of governors acting as the administrative board for purposes of collective bargaining and in other educational matters. Included in the pamphlet are sections covering: statement of policy, definitions, public employees' relations board, determination of representation status, resolution of disputes, elections, unions, management rights, and student rights. (Author/PG)

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SUGGESTED INCLUSIONS IN STATE LEGISLATION FOR HIGHER EDUCATION INSTITUTIONS WHICH WISH TO NAME THE

CHIEF EXECUTIVE OFFICER
as
EMPLOYER

This is a staff paper in response to requests from administrators and trustees in about 11 states where legislatures are considering bills that will enable faculties to unionize for purposes of collective bargaining. Perhaps the most important question posed by such legislation is "who is the employer for the state university, a state college, or a community college?" When the higher education community permits this question to go unanswered, the uninformed legislature often permits a state agent outside the university to be the employer. This may create a hiatus within the university by requiring faculty to bargain with someone such as a commissioner of administration. In addition, impasses and grievances may be settled outside the authority of the university. Faculty and students as well as trustees and administrators find that their ability to govern "collegially" may be seriously weakened. Some institutions want the chief executive officer to be named as the "employer" for purposes of bargaining. If the law so designates, it should also, for purposes of consistency contain a number of other clauses and sections. This paper is intended to offer one set of suggestions for shaping legislation that would be beneficial to trustees and others interested in the integrity and ability of institutions to govern themselves.

These suggestions are made after consulting with specialists in labor relations, trustees, legislators, and university administrators. It is important to understand that almost no one agrees fully on the suggestions made. Each national union organization has its own model legislation which is worthy of review.

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Suggested Inclusions in State Legislation for Higher Education Institutions Which Wish to Name the Chief Executive Officer as Employer

Note: These suggestions are based on a "decision" that the chief executive officer be designated as the "employer" representing the government, with the board of governors acting as the administrative board for purposes of collective bargaining as well as other educational matters.

I. Statements of policy - (purpose). Include the usual statement, e.g. "...promote harmonious and cooperative relationships... and orderly and uninterrupted government services..." This is important for purposes of evaluation and future amendments.

II. Definitions

(1) "public employer" - for higher education: chancellor or president of University or coordinating board, as desired.

(2) "terms and conditions of employment" (Scope of bargaining)
Exclude: a) responsibilities of trustees and chief executive officer as stated in the education law.
b) final responsibility for making decisions re employment, reemployment, promotion and merit salary increases of professional personnel in CB unit. (This should be the responsibility of the employer.)
c) final responsibility for making decisions about planning, budgeting, and allocation of human and material resources except those decisions negotiated about salaries and fringe benefits. (This should be the responsibility of the employer.)
d) final responsibility for approving educational policies formulated through campus processes.

Include: standards of productivity and performance of employees.

(3) "employee organization" - include a coalition of employee organizational representatives as eligible type or body to negotiate on behalf of all employees.

Exclude: organizations that discriminate on any basis.

(4) "public employee" - exclude part time faculty who teach a total of fewer than 14 credit hours during the two terms immediately preceding the election; or who have not been employed during each of the four consecutive terms (excluding summer terms) immediately prior to the election.

Exclude: administrators who a) make effective decisions relative to hiring, firing, promoting, increasing salaries of, scheduling work assignments for, or disciplining, employees in the unit; or who allocate funds for expenditures in behalf of unit employees; or who help negotiate or administer the contract.

III. Agreemert between public employer and employees
a) Agreement shall not become effective until approved by the legislature.

IV. Public Employees Relations Board
a) shall provide mediation and fact-finding services (free, if possible).
b) shall not arbitrate either impasses or grievances - which responsibility shall be reserved to the board of governors and/or campus trustees.
c) shall have right to appoint assistants with training and understanding in higher education collective negotiations for purposes of conciliating and reviewing cases in higher education.
d) shall not determine representation units for higher education, which right shall be reserved to the board of trustees.
e) shall not resolve disputes arising from improper practice charges, which responsibility shall be reserved to the board of trustees.
f) shall make studies (and employ appropriate research personnel) as to the effectiveness of CB for public employees (in higher education).

V. Determination of Representation Status
a) The board of trustees (regents) shall have sole responsibility for establishing rules and regulations governing size and membership of representational units; for supervising elections; and for resolving disputes pertaining thereto.

VI. Rights accompanying certification of representational unit
a) shall be in accordance to rules made by board of trustees who may extend exclusive bargaining rights to a single organization after an election, or may provide for coalition bargaining in accordance to voting preference during the election.

VII. Resolution of disputes
a) Public Employee Relations Board shall provide mediation and fact-finding services without cost at the request of either party.
b) Only after all attempts have failed, and at the request of either party, the trustees shall have sole authority to provide arbitration services eventuating in a final binding decision by the board of trustees.
c) Items in a negotiated contract requiring an additional appropriation of funds by a legislative body shall not be effective until such body passes a law appropriating said funds.

VIII. Unfair Labor Practices (Include the usual ULP).

IX. Prohibition of Strikes (Yes)
a) Any person perceived, after fair hearing by the chief

Prohibition of Strikes (continued)
administrative officer or his surrogate, of having participated in a strike or other work stoppage shall be permanently removed from the public payroll unless the board of trustees, upon recommendation of the chief administrator, approves reemployment of said person. If and when reemployed, said person shall 1) if tenured be placed on a probationary appointment for a minimum of 24 months; if non-tenured, meet a full probationary period extended by 24 months; and 2) lose a day's pay for each day on strike (or partial strike): and 3) shall lose membership in the union for a period of 24 months, specifically losing all rights to vote, to serve on union committees, or be a union officer formally or informally.

b) A union participating in a strike shall be decertified.

X. Injunctive Relief -(yes; shall be available to chief administrative officer when threatened by a strike or work stoppage.)

XI. Judicial Review and Enforcement
a) Orders of the trustees shall be final unless reversed or modified by judicial review. Only matters of procedural due process shall be reviewable.

XII. Management and Confidential Employees
a) Include all "administrators" excluded under "public employee" II(4).

XIII. Elections
a) Shall be scheduled and supervised by the board of trustees.
b) Election shall be in two sections: 1) the first ballot shall contain only two choices, namely, a faculty union or no faculty union; and 2) the second ballot shall contain a list of all agents presenting petitions containing signatures of 10% or more of the eligible voters. (There will be no second ballot unless a majority of eligible voters on the first ballot is for unionization.)
c) The board of trustees shall determine after each election whether or not there shall be a single exclusive bargaining agent (as in the case where on agent receives a very large percentage of the votes) or whether there shall be coalition bargaining (as in a case where no agent receives more than 50% of the vote.)

XIV. Unions
a) Any organization practicing "discrimination" shall be ineligible to participate in elections or negotiations.
b) Each participating organization must establish a grievance procedure whereby any member can have complaints against union officers or union action openly and quickly reviewed and settled.
c) Each participating organization shall keep up-to-date records of members, income, disbursements, officers,

Unions (continued)

meetings, etc. and make them available on a semi-annual basis.

d) Each participating union, since its members are professionals responsible for sharing in governance, supervisory and administrative duties, shall establish grievance procedures whereby management may call to the attention of the members unethical or improper conduct of union officials which may be detrimental to the institution, the management, or to the members themselves.

XV. Management Rights

a) Responsibilities and authority of educational executives as stated in the education law shall be non-delegable and, therefore, not negotiable.

b) Management shall establish procedures for disciplining any faculty member not conscientiously or competently carrying out his assigned duties. Appropriate policies governing the conduct of hearings and appeals shall be established by the chief executive, together with appropriate penalties.

c) Management shall have the right at all times to express freely its opinion as to election issues, the qualifications of competing agencies, union activities, bargaining problems, salary issues, etc.

XVI. Student Rights

a) Students shall be invited by both management and employees' union to participate in collective negotiations activities. The manner in which they participate shall be determined by the trustees after hearing and reviewing testimony from the three parties.